

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of MICHAEL and  
TANIA PRICE.

2d Civil No. B263562  
(Super. Ct. No. 1438381)  
(Santa Barbara County)

MICHAEL MCKEON PRICE,

Appellant,

v.

TANIA PRICE,

Respondent.

Michael McKeon Price (Michael) and Tania Price (Tania) settled their dissolution proceeding through a stipulated judgment in which Michael agreed to pay Tania child and spousal support.<sup>1</sup> After he lost his job as an orthopedic surgeon with the Scheinberg Orthopedic Group (Scheinberg), he requested a change of venue and modification of support payments. Citing their disparate incomes, Tania sought an order requiring Michael to pay her attorney fees and costs to defend the motions. The trial court partially

---

<sup>1</sup> We refer to the parties by their first names to avoid confusion. No disrespect is intended.

granted the request, ordering Michael to pay Tania \$15,000 in fees and \$1,500 in costs.

Michael contends the trial court abused its discretion because (1) it based the fee award, in part, on a 401k account he did not actually fund, (2) Tania failed to specify whether she was seeking an award of fees and costs under Family Code section 2030<sup>2</sup> or sanctions under section 271 and (3) Tania's attorney did not accurately state the billing rate for his services. We conclude the trial court appropriately exercised its discretion, made factual findings supported by the evidence and correctly applied the law. We affirm.

### FACTS AND PROCEDURAL HISTORY

Michael and Tania were married on September 9, 2000, and had twins five years later. They separated on September 8, 2013, after 13 years of marriage. The parties entered into a stipulated judgment of dissolution on April 11, 2014, in which Michael agreed to pay \$5,912 per month in child support and \$10,540 per month in spousal support.

In 2014, Michael earned over \$64,000 per month working as an orthopedic surgeon for Scheinberg. Throughout the marriage, he also received additional income as a speaker at medical seminars and other events. Tania, who has not worked in 14 years, is a stay-at-home mother and primary caretaker of the two children. Her only income is the child and spousal support Michael agreed to pay in the stipulated judgment.

Michael was terminated from his employment at Scheinberg in October 2014. He did not pay child support for November 2014 and made only partial child support payments for December 2014 and January 2015. He paid no spousal support for the months of November 2014, December 2014 and January 2015, and made only a partial payment for October 2014.

---

<sup>2</sup> All further statutory references are to the Family Code.

Michael formed a corporation in November 2014 with the intent to start his own practice. Citing changed circumstances, he sought to modify spousal and child support and also requested a change of venue to Los Angeles County.<sup>3</sup> Tania filed a request for order (RFO) allowing her \$30,000 in attorney fees and \$1,500 in costs to defend against Michael's post-judgment litigation. Her RFO included a completed income and expense declaration (Form FL-150), Request for Attorneys' Fees and Costs Order Attachment (Form FL-319), Declaration for Attorneys' Fees and Costs Order Attachment (Form FL-158) and a declaration from her attorney, Ruston T. Imming. A memorandum of points and authorities was not required. (See Cal. Rules of Court, rule 5.92(c).)

Tania asserted that she owed \$10,150 in attorney fees and costs and estimated she would incur another \$21,350 to defend Michael's motions. Tania declared that the fees and costs were necessary to present her case adequately, that she has "limited access to funds to retain or maintain an attorney compared to [Michael]" and that Michael "has or is reasonably likely to have the ability to pay for the attorney's fees for me and himself . . . ."

Michael filed a responsive income and expense declaration. He claimed \$11,000 per month as self-employment income and stated he had \$25,000 in cash. He included a copy of his 2014 W-2, which showed that he had funded a \$5,500 income retirement account (IRA). He also included e-mails with his accountant showing a need to amend that tax filing because he had not actually funded the IRA. Michael produced no evidence regarding his employment at The Reverse Aging Center, where he is on staff.

---

<sup>3</sup> The trial court ultimately denied the motion for change of venue. It took Michael's request for modification of spousal and child support off-calendar due to his failure to comply with required financial disclosures.

The parties submitted the matter on the pleadings, with neither party requesting a statement of decision. Following a hearing, the trial court ordered Michael to pay Tania attorney fees in the amount of \$15,000 and costs in the amount of \$1,500 within 30 days. The court found there was a disparity of access to funds to retain counsel, and that an award of attorney fees and costs was appropriate under section 2030. It stated: "Tania is unemployed. Michael is an experienced surgeon and is employed. Although Michael's financial disclosures are incomplete at best, they show he paid \$5,500 into his IRA in December 2014, and has made substantial deposits in both savings and checking accounts in October, November and December 2014." Michael, who has not paid the fee award, appeals.<sup>4</sup>

## DISCUSSION

### *Standard of Review*

"On appeal, we review an attorney fee award under section 2030 for an abuse of discretion." (*In re Marriage of Sorge* (2012) 202 Cal.App.4th 626, 662.) Under this standard, we consider de novo any questions of law raised on appeal, but will uphold any findings of fact supported by substantial evidence. (*Id.* at p. 653.) The trial court's order "will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made." (*In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 296.)

### *Award of Attorney Fees and Costs*

Section 2030 authorizes a need-based award of attorney fees and costs to "ensure that each party has access to legal representation . . . to preserve each party's rights" in a proceeding for dissolution of marriage and in

---

<sup>4</sup> On April 20, 2016, Michael moved to augment the record with the trial court's order denying Tania's request that Michael Price, M.D., Inc. be treated as Michael's alter ego. We grant the unopposed motion.

any proceeding subsequent to entry of a judgment of dissolution. (§ 2030, subd. (a)(1).) In determining whether to order one party to pay another party's fees and costs and, if ordered, what amount shall be paid, the court is to consider the respective incomes and needs of the parties and all other circumstances affecting the parties' respective abilities to pay for legal representation. (§ 2030, subd. (a)(2).) "The court may make an award of attorney's fees and costs under Section 2030 . . . where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties." (§ 2032, subd. (a); see *In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 865.)

Michael contends that the trial court erred in finding he had made an IRA contribution in December 2014. He asserts that but for this error, the court would not have awarded fees and costs to Tania under section 2030. Tania claims this misstates the record. We agree with Tania.

The trial court found a disparity of access to funds *partly* because Michael had made the IRA contribution. The court also found that he had made large deposits to bank accounts in October, November and December 2014, and that he was employed as an experienced surgeon. Specifically, Tania produced evidence that Michael had made payments on his American Express credit card totaling at least \$27,779, had made an opening deposit of \$10,000 into his new "Michael Price, M.D. Inc." checking account, had deposited \$16,666 into his "Michael Price, M.D. Inc." savings account, and had paid himself approximately \$12,128.50 on December 26, 2014. She also proffered evidence that Michael receives money from speaking fees and from his affiliation with The Reverse Aging Center. From this evidence, the court reasonably could have inferred that Michael's actual income exceeded the amounts reflected in his income and expense declaration and that he is capable of earning more money. A trial court may rely on imputed income in

adjudicating an attorney fee request. (3 Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2016) ¶ 14:173, p. 14-62; see *In re Marriage of Berger* (2009) 170 Cal.App.4th 1070, 1085.)

Moreover, there was conflicting evidence regarding whether Michael actually made the \$5,500 IRA contribution. His W-2 form showed that he had funded it. Although he produced contrary evidence, the trial court expressly found that his financial disclosures were "incomplete at best." We must affirm the trial court's factual findings if they are supported by substantial evidence and credibility determinations are for the trial court to make. (*Cuiellette v. City of Los Angeles* (2011) 194 Cal.App.4th 757, 765.) We give deference to the trial court's factual findings "because those courts generally are in a better position to evaluate and weigh the evidence. [Citation.]" (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 385.) Based on the evidence before it, the court reasonably concluded that the parties had a disparity of access to funds and that Michael should pay Tania \$15,000 in attorney fees and \$1,500 in costs to help offset that disparity. The court did not abuse its discretion by awarding such fees and costs.

#### *Due Process Argument*

Michael contends his due process rights were violated because the RFO filed by Tania did not specify that she was seeking attorney fees and costs under section 2030 as opposed to sanctions under section 271. This contention is specious. Although the RFO and supporting documents did not cite the applicable code section, they unquestionably sought an award of attorney fees and costs and not an award of sanctions. Tania averred that she has "limited access to funds to retain or maintain an attorney compared to [Michael]" and that Michael "has or is reasonably likely to have the ability to pay for the attorney's fees for me and himself . . . ." At no point was the word

"sanctions" mentioned, and the trial court plainly understood that Tania was making a needs-based request for attorney fees and costs under section 2030.

More importantly, in his opposition to the RFO, Michael acknowledged his understanding that Tania was requesting fees and costs under either section 2030 or section 271 and argued why the request was inappropriate under both sections. Thus, even if Tania should have specified the code section, Michael was not prejudiced by the omission. He asserted that "[t]here is no basis [to award fees] pursuant to . . . Section 2030 as there is no discrepancy in ability to pay between me and TANIA" and set forth the reasons why. At the hearing, the trial court stated it had read and considered his "lengthy response." We conclude Michael has not demonstrated error.

#### *Discrepancy in Billing Rates*

Michael's final contention highlights the contentiousness of this litigation. In opposing Michael's request to change venue to Los Angeles County, Tania's counsel noted the difference in the billing rates between Santa Barbara and Los Angeles and stated his billing rate is \$350 per hour. The bills attached to his declaration in support of the request for fees, however, state that his rate is \$400 per hour. This discrepancy caused Michael to file a complaint with the California State Bar, contending that Tania's attorney either misrepresented his rate to avoid a venue change or was overcharging Tania for his services.

Tania claims that the discrepancy was an inadvertent clerical error on her attorney's part. This appears likely given that the difference is only \$50 and the two documents were filed weeks apart. In any event, Michael has not shown prejudice. Tania asked the trial court to award \$30,000 in attorney fees based upon her attorney's estimation of the fees to defend Michael's motions. The trial court cut that request in half, awarding just \$15,000. There also is nothing in the record to suggest that the request for the

venue change was denied because of the representation regarding Tania's attorney's billing rate. Tania raised numerous arguments in opposition to the request, not least of which was the comparative congestion and overcrowding in the Los Angeles court system.

Furthermore, declarations or other direct evidence of the reasonableness of counsel's services is not essential to support an attorney fee award "because such evidence is necessarily before the trial court which hears the case. [Citation.]" (*In re Marriage of McQuoid* (1991) 9 Cal.App.4th 1353, 1361.) Thus, when informed of the nature and extent of the legal services rendered, as the trial court was here, the court may rely on its own experience and knowledge in determining the reasonable value of the services and to fix the amount of fees accordingly. (*In re Marriage of Jovel* (1996) 49 Cal.App.4th 575, 588; *Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1239.) Once again, Michael has not demonstrated error.

#### DISPOSITION

The order awarding attorney fees and costs is affirmed.  
Respondent shall recover her costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.



Donna D. Geck, Judge  
Superior Court County of Santa Barbara

---

The Law Offices of Cynthia A. de Petris, Cynthia A. de Petris and  
Ariel Carter for Appellant.

Misho Law Group and Sarah Orr for Respondent.